

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SCOTT KINGSTON,

Plaintiff

v.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Defendant.

**Case No. 2:19-cv-01488-MJP**

**STIPULATED PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

(a) Financial information, including but not limited to records of business and personal accounts and transactions held by banks and financial institutions;

(b) Documents containing confidential, proprietary, and/or trade secret information relating to Defendant’s operations, including but not limited to, contracts, customers, account information, business methods and processes, and company financial information, provided the information is not otherwise available to the public through other means, including but not limited to public filings and investigations, newspaper reports, or other outstanding litigation or proceedings; and

(c) Employee salary information, personnel files, medical information, disciplinary, and other personal, sensitive employee information.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential

1 material must be stored and maintained by a receiving party at a location and in a secure manner  
2 that ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the designating party, a receiving party may  
5 disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as employees  
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the  
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
10 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
11 designated;  
12

13 (c) experts and consultants to whom disclosure is reasonably necessary for this  
14 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of  
17 confidential material, provided that counsel for the party retaining the copy or imaging service  
18 instructs the service not to disclose any confidential material to third parties and to immediately  
19 return all originals and copies of any confidential material;  
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21 (f) during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
25 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
26 under this agreement; and  
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1 (g) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
4 referencing such material in court filings, the filing party shall confer with the designating party,  
5 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
6 remove the confidential designation, whether the document can be redacted, or whether a motion  
7 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
8 designating party must identify the basis for sealing the specific confidential information at issue,  
9 and the filing party shall include this basis in its motion to seal, along with any objection to  
10 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
11 followed and the standards that will be applied when a party seeks permission from the court to  
12 file material under seal. A party who seeks to maintain the confidentiality of its information must  
13 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the  
14 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,  
15 in accordance with the strong presumption of public access to the Court's files.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
20 or non-party that designates information or items for protection under this agreement must take  
21 care to limit any such designation to specific material that qualifies under the appropriate  
22 standards. The designating party must designate for protection only those parts of material,  
23 documents, items, or oral or written communications that qualify, so that other portions of the  
24 material, documents, items, or communications for which protection is not warranted are not  
25 swept unjustifiably within the ambit of this agreement.  
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
3 unnecessarily encumber or delay the case development process or to impose unnecessary  
4 expenses and burdens on other parties) expose the designating party to sanctions.

5  
6 If it comes to a designating party's attention that information or items that it designated  
7 for protection do not qualify for protection, the designating party must promptly notify all other  
8 parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
10 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
11 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
12 be clearly so designated before or when the material is disclosed or produced.

13  
14 (a) Information in documentary form: (e.g., paper or electronic documents and  
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
16 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
17 confidential material. If only a portion or portions of the material on a page qualifies for  
18 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
19 making appropriate markings in the margins).

20  
21 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any  
22 participating non-parties must identify on the record, during the deposition or other pretrial  
23 proceeding, all protected testimony, without prejudice to their right to so designate other  
24 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
25 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
26 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
27 confidential information at trial, the issue should be addressed during the pre-trial conference.  
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1 (c) Other tangible items: the producing party must affix in a prominent place on the  
2 exterior of the container or containers in which the information or item is stored the word  
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
6 designate qualified information or items does not, standing alone, waive the designating party’s  
7 right to secure protection under this agreement for such material. Upon timely correction of a  
8 designation, the receiving party must make reasonable efforts to ensure that the material is  
9 treated in accordance with the provisions of this agreement.

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11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
13 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

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19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
20 regarding confidential designations without court involvement. Any motion regarding  
21 confidential designations or for a protective order must include a certification, in the motion or in  
22 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
23 conference with other affected parties in an effort to resolve the dispute without court action. The  
24 certification must list the date, manner, and participants to the conference. A good faith effort to  
25 confer requires a face-to-face meeting or a telephone conference.  
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6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,

(c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.



IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 15, 2020

DATED: September 15, 2020

/s/ Jeremy R. Williams

Toby J. Marshall, WSBA #32726  
Email: tmarshall@terrellmarshall.com  
Brittany J. Glass, WSBA #52095  
Email: bglass@terrellmarshall.com  
936 North 34th Street, Suite 300  
Seattle, Washington 98103  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450

/s/ Justin R. Barnes

Barry A. Johnsrud, WSBA #21952  
Email: barry.johnsrud@jacksonlewis.com  
520 Pike Street, Suite 2300  
Seattle, Washington 98101  
Telephone: (206) 405-0404  
Facsimile: (206) 405-4450

Matthew E. Lee, *pro hac vice*

Email: matt@wbmlp.com

Jeremy R. Williams, *pro hac vice*

Email: jeremy@wbmlp.com

WHITFIELD BRYSON & MASON, LLP

900 W. Morgan Street

Raleigh, North Carolina 27603

Telephone: (919) 600-5000

Facsimile: (919) 600-5035

Justin A. Barnes, *pro hac vice*

Email: justin.barnes@jacksonlewis.com

Kelli N. Church, *pro hac vice*

Email: kelli.church@jacksonlewis.com

171 17<sup>th</sup> Street, NW

Suite 1200

Atlanta, GA 30363

Telephone: (404) 525-8200

Attorneys for Plaintiff

Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This further order shall not be interpreted to waive the right of any party to review documents prior to their production in discovery in this case.

DATED: September 16, 2020

A handwritten signature in black ink, appearing to read "Marsha J. Pechman", written over a horizontal line.

Marsha J. Pechman  
United States Senior District Judge

## EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case *Kingston v. International Business Machines Corporation – Case No. 2:19-cv-01488-MJP*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the United States of America and hereby certifies that on this date, a true and accurate copy of the document to which this declaration is affixed was served via ECF on the following counsel of record:

Toby J. Marshall, WSBA #32726  
Brittany J. Glass, WSBA #52095  
WHITFIELD BRYSON & MASON, LLP  
936 North 34<sup>th</sup> Street, Suite 300  
Seattle, WA 98103  
[tmarshall@terrellmarshall.com](mailto:tmarshall@terrellmarshall.com)  
[bglass@terrellmarshall.com](mailto:bglass@terrellmarshall.com)

Attorneys for Plaintiff

Matthew E. Lee, *pro hac vice*  
Jeremy R. Williams, *pro hac vice*  
WHITFIELD BRYSON & MASON, LLP  
900 W. Morgan Street  
Raleigh, NC 27603  
[matt@wbmlp.com](mailto:matt@wbmlp.com)  
[jeremy@wbmlp.com](mailto:jeremy@wbmlp.com)

Attorneys for Plaintiff

DATED this 15th day of September, 2020.



Nani Vo